

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KEEWIN L. WALKER,

Plaintiff,

v.

M. POPOW, et al.,

Defendants.

Case No. [19-cv-02944-EMC](#)

ORDER OF DISMISSAL

Docket No. 9

Keewin L. Walker, a prisoner at the Pelican Bay State Prison, filed this *pro se* civil rights action under 42 U.S.C. § 1983. The Court dismissed the complaint with leave to amend because the complaint failed to state a claim for an Eighth Amendment violation and failed to state a claim for retaliation.

Mr. Walker then filed an amended complaint, which is now before the Court for review under 28 U.S.C. § 1915A. In its review the court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *See id.* at § 1915A(b). *Pro se* pleadings must be liberally construed. *See Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

The amended complaint, like the original complaint, alleges that correctional officer (C/O) Popow intentionally delayed and disrupted Mr. Walker's ability to have a pre-dinner shower every day after he had worked with contaminants, and announced to the housing tier that inmate programming would be delayed because Mr. Walker needed to shower. The amended complaint, like the original complaint, also alleges that sergeant Spencer caused Mr. Walker to be moved to another housing unit after Mr. Walker had complained about his shower situation. The amended

1 complaint essentially repeats the allegations in the original complaint, and does not cure the
2 deficiencies mentioned in the order of dismissal with leave to amend.

3 The order of dismissal with leave to amend discussed the objective and subjective elements
4 of an Eighth Amendment claim and explained the shortcomings in Mr. Walker's pleading:

5 The complaint does not adequately plead an objectively serious
6 condition because Mr. Walker does not allege on how many
7 occasions he was denied a shower or what contaminants were
8 actually on him when he was denied a shower. Without this
9 information, it cannot be determined whether this was a sporadic
10 problem or a persistent problem, and whether there [was an] actual
11 rather than potential contamination problem. The complaint also
12 does not adequately plead the subjective element because no facts
13 are alleged suggesting that C/O Pop[ow] knew of and disregarded an
14 excessive risk to inmate health or safety when he refused to let Mr.
15 Walker shower before dinner.

16 The allegation that C/O Pop[ow] announced to the housing unit that
17 the programming was delayed so that Mr. Walker could have his
18 shower does not state a plausible claim of deliberate indifference to
19 Mr. Walker's safety. No facts are alleged to suggest that prisoners
20 are so inclined toward violence that a mere announcement of an
21 inconvenience, even when it is announced that the inconvenience is
22 caused by a specific prisoner, will cause other prisoners to attack the
23 prisoner who causes the inconvenience. *Cf. Valandingham v.*
24 *Bojorquez*, 866 F.2d 1135, 1138 (9th Cir. 1989) (deliberately
25 spreading rumor that prisoner is snitch may state claim for violation
26 of right to be protected from violence while in state custody). Mr.
27 Walker does not allege that he was attacked or harmed by any
28 inmate as a result of the announcement.

18 Docket No. 8 at 3-4. The amended complaint does not cure any of these deficiencies, i.e., Mr.
19 Walker does not allege facts plausibly suggesting an objectively serious condition or that C/O
20 Popow was deliberately indifferent to health or safety when he disallowed the pre-meal showers
21 and announced a delay in programming for the housing unit.

22 The order of dismissal with leave to amend also described the elements of a retaliation
23 claim and explained how the complaint failed to state a retaliation claim.

24 The complaint suggests that there was a legitimate correctional goal
25 promoted by the action, i.e., sergeant Spencer said he was moving
26 Mr. Walker to another housing unit so that he could get his shower.
27 If showering was necessary before meals and could be
28 accommodated more easily in the new housing unit, the move
reasonably would advance a legitimate correctional goal. The
complaint also does not adequately allege an adverse action or a
chilling effect because Mr. Walker does not allege that there was
anything worse about the new housing unit than the old housing


unit.

Docket No. 8 at 4. The amended complaint does not cure these deficiencies in the retaliation claim, i.e., Mr. Walker does not allege facts plausibly suggesting the absence of a legitimate correctional goal, an adverse action, or a chilling effect.

The amended complaint, like the original complaint, fails to state a claim upon which relief may be granted. Further leave to amend will not be granted because it would be futile: the Court already described the deficiencies and Mr. Walker was unable or unwilling to cure them. Accordingly, this action is **DISMISSED** for failure to state a claim upon which relief may be granted. The clerk shall close the file.

IT IS SO ORDERED.

Dated: February 10, 2020


EDWARD M. CHEN
United States District Judge